GTE California Incorporated *and* Communications Workers of America, Local 9586 and Communications Workers of America, AFL-CIO, Party to the Contract. Case 31–CA–20968

September 23, 1997

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS FOX AND HIGGINS

On a charge filed December 30, 1994, by Communications Workers of America, Local 9586, the General Counsel of the National Labor Relations Board issued a complaint August 19, 1995, against GTE California Incorporated (GTE) alleging that GTE violated Section 8(a)(5) and (1) of the Act by refusing to bargain collectively in good faith with the Union as the exclusive collective-bargaining representative of the employees in the bargaining unit. The Respondent filed a timely answer admitting in part and denying in part the allegations of the complaint.

On August 5, 1996, GTE, Local 9586, and the General Counsel filed with the Board a stipulation of facts and a motion to transfer this case to the Board. The parties agreed that the charge, the complaint, the answer, the stipulation, and the exhibits attached to the stipulation shall constitute the entire record in this proceeding and they waived a hearing before and decision by an administrative law judge. On September 18, 1996, the Board approved the stipulation and transferred the proceeding to the Board for issuance of a decision and order. The General Counsel and GTE filed briefs.

On the entire record and the briefs, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

GTE, a corporation with offices and places of business in Thousand Oaks, Torrance, Lancaster, and Huntington Beach, California, is engaged in the installation and maintenance of customer telecommunications equipment. In the course and conduct of its business operations, GTE annually purchases and receives goods or services valued in excess of $50,000 directly from sellers or suppliers located outside the State of California.

The parties stipulated, and we find, that GTE is an employer engaged in commerce with the meaning of Section 2(2), (6), and (7) of the Act and that Local 9586 and Communications Workers of America, AFL-CIO are labor organizations within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. *Facts*

Since at least September 13, 1967, and continuing to date, the Union has been the exclusive representative for the purposes of collective bargaining of the employees in the following appropriate unit:

> *Included*: All hourly paid employees
> *Excluded*: All other employees, professional employees, managerial employees, guards, supervisors, as defined in the Act, and confidential employees as agreed to by the parties.

Recognition of the Union has been embodied in successive collective-bargaining agreements, the most recent of which was effective by its terms from December 17, 1992, to March 17, 1996 (the contract). At all times material, Local 9586, on behalf of the Union, has administered the contract in and around Covina, Long Beach, and Los Angeles, California. Local 9586 is now an agent of the Union, acting on its behalf within the meaning of Section 2(13) of the Act.

About September 17, 1994, a customer dialed ''4-1-1'' to obtain a telephone number. GTE believes that the operator who provided the requested telephone number was Charles Hokanson, a telephone information assistance operator for GTE. Sometime after speaking to the operator, the customer called GTE and lodged a complaint regarding the operator's behavior, which had upset the customer. About September 22,[1] on review of Hokanson's prior work record, GTE terminated Hokanson due to the customer complaint.

Beginning about September 22, the Union requested that GTE provide the Union with the name, address, and home telephone number of the customer who had complained on September 17. About September 24, the Union hand-delivered to GTE Supervisor Peggy Brokar an undated written information request from David Wagner, executive board member of Local 9586, requesting, inter alia, the name and telephone number of the complaining customer.

About September 26, Local 9586 filed a grievance with GTE concerning Hokanson's termination. About October 11 and 13, GTE and the Union held a second-step grievance meeting concerning Hokanson's termination, which was attended by, among others, Wagner and Rafael Zapeda, GTE's regional administrative-labor relations representative, and at which the Union requested the complaining customer's name, address, and home telephone number.

During the course of researching the Union's information request, Zapeda discovered that the complaining customer's home telephone number was ''non-

[1] All dates are in 1994 unless otherwise noted.

published/unlisted.''[2] About October 11, Ronald Gohner, operator services supervisor, called the complaining customer to inquire whether she would permit GTE to release her name, address, and home telephone number to the Union for use in processing Hokanson's grievance. The complaining customer refused GTE permission to release her name, address, or home telephone number to the Union.

About October 11, at the second-step grievance meeting, GTE, by Zapeda, informed the Union, through Wagner, for the first time, that the complaining customer's home telephone number was ''non-published/unlisted.''

About October 18, during separate telephone conversations with Zapeda and GTE Labor Relations Representative Larry Mortenson, the Union, through Wagner, requested the complaining customer's name, address, and home telephone number.

About November 28, by letter from Zapeda to Local 9586 President Mark Crowell, GTE notified Local 9586 for the first time in writing that the complaining customer's home telephone number was ''non-published/unlisted'' and that the complaining customer would not permit GTE to disclose that information.

About December 8, GTE and the Union held a third-step grievance meeting concerning the termination of Hokanson, which was attended by GTE Labor Relations Representative Jerry Russell and Union Representative Rudy Mendoza, and at which time the Union requested the complaining customer's name, address, and home telephone number. About January 19, 1995, the Union requested, in writing, that GTE supply the name, address, and home telephone number of the complaining customer. About February 1995, the Union, through Wagner, spoke telephonically with an attorney for GTE and Mortenson, and requested the complaining customer's name, address, and home telephone number.

During February 1995, GTE and the Union discussed GTE's willingness to call the complaining customer and ask her the Union's questions or arrange a conference call with the Union and the complaining customer in which GTE would drop off the line so that the Union could have a private conversation with the complaining customer. The Union rejected both proposals at that time.

About February 7, 1995, GTE, by Zapeda, received an undated letter from the Union, through Mendoza, which requested that GTE supply the complaining customer's name, address, and home telephone number.

On September 6, 1995, Zapeda contacted the complaining customer to inquire whether she would be willing to speak to the Union, provided that GTE dialed the number and did not release her home telephone number or address to the Union. The complaining customer agreed to participate in such a call.

About October 9, 1995, Zapeda and Mendoza telephoned the complaining customer. Once the complaining customer was on the line, Zapeda left the room, at which time Mendoza and the complaining customer had a private conversation lasting approximately 20 minutes. Subsequent to that call, the Union has not requested any additional information regarding the complaining customer, nor has the Union requested any further contact with the complaining customer.

Beginning about September 24, 1994, and continuing to date, GTE has refused and continues to refuse to provide, during the processing of grievances, the name, addresses, and home telephone numbers of any complaining customers with ''non-published/unlisted'' numbers who have not given their consent to release that information.

B. *Contentions of the Parties*

The General Counsel argues as follows. GTE violated Section 8(a)(5) by failing to provide, during the processing of a grievance, the requested name, address, and telephone number of the customer whose complaint resulted in Hokanson's termination. Employers have a duty to furnish unions with all information relevant to the processing of grievances. Such information generally includes the names of witnesses to an incident for which an employee is disciplined. Additionally, unions, under their duty of fair representation, have an obligation to seek such information. When confronted with a union request for relevant but allegedly confidential information, the Board, under *Pennsylvania Power & Light Co.*, 301 NLRB 1104 (1991), must balance the union's need for the information against any legitimate and substantial confidentiality interests established by the employer. GTE has failed to establish any confidentiality interest in the complaining customer's name, address, and telephone number because it was not shown that the complaining customer was given any assurance of privacy regarding the lodging of the complaint. Additionally, the complaining customer's state law expectation of privacy, if any, in her unlisted number is preempted under

[2] GTE's Tariff Rule No. 44, filed with the California Public Utilities Commission in 1981, states that it incorporates a rule prescribed by the Commission. Tariff Rule No. 44 in substance provides that, on a subscriber's request, the subscriber's name, address, and telephone number are not listed in any directory or in the directory assistance records available to the general public. The rule further provides that such unlisted information shall be released in response to legal process or to certain authorized local, state, and Federal Governmental agencies, provided that the requesting agency follows specified procedures for release of nonpublished information. Federal government agencies that the rule deems authorized to obtain such unlisted information include, generally, agencies that enforce criminal laws, conduct investigations involving national security, protect federal or foreign officials, protect public health and safety, or conduct emergency rescue operations.

Garmon.[3] In any event, any right of privacy was waived as of the registering of the complaint.

GTE argues as follows. The information contained in the complaining customer's nonpublished telephone listing is clearly confidential. Under Tariff Rule 44, which is required by the California Public Utilities Commission and has the force and effect of law, GTE is obligated to provide the complaining customer with a nonpublished telephone number and not to disclose it to the Union. Additionally, the right to privacy recognized by the California Constitution applies to nonpublished telephone listings. Also, the California Public Utilities Code prohibits release of such information without the customer's written consent. As the complaining customer requested and paid for a nonpublished telephone listing, she had a reasonable expectation that her listing information would remain confidential. Additionally, she denied GTE's specific request to disclose her name, address, and telephone number to the Union. GTE's refusal to provide this information is in accord with Board decisions declining to require disclosure of a complainant's identity when the employer has promised anonymity to the complainant. Moreover, in accordance with Board law, GTE bargained with the Union and the parties reached an accommodation that provided the Union with the information needed to perform its obligations as bargaining representative.

C. *Discussion*

An employer has a statutory obligation to provide requested information that is potentially relevant and will be of use to a union in fulfilling its responsibilities as the employees' exclusive bargaining representative, including its responsibilities regarding processing grievances. *NLRB v. Acme Industrial Co.*, 385 U.S. 432 (1967). The names and addresses of witnesses to an incident for which an employee receives discipline is information relevant to a union in processing grievances. See *Boyertown Packaging Corp.*, 303 NLRB 441, 444 (1991), and cases cited therein. Accordingly, we find that the name, address, and telephone number of the customer whose complaint led to Hokanson's discharge is information relevant to the Union.

A union's interest in relevant and necessary information, however, does not always predominate over other legitimate interests. As the Supreme Court explained in *Detroit Edison*, ''a union's bare assertion that it needs information to process a grievance does not automatically oblige the employer to supply all the information in the manner requested.''[4] Thus, in dealing with union requests for relevant but assertedly confidential information possessed by an employer, the Board is required to balance a union's need for the information against any legitimate and substantial confidentiality interest established by the employer. See, e.g., *Exxon Co. USA*, 321 NLRB 896 (1996); *Good Life Beverage Co.*, 312 NLRB 1060 (1993); *Pennsylvania Power*, supra; *Howard University*, 290 NLRB 1006 (1988).

We find that GTE has established a confidentiality interest regarding the complaining customer's name, address, and telephone number. GTE is required by the California Public Service Commission generally not to release the name, address, and telephone number of subscribers who request ''nonpublished/unlisted'' service. Subscribers, such as the complaining customer, who purchase such service have a reasonable expectation that GTE will not release their name, address, or telephone number except under the limited circumstances provided in GTE's Tariff Rule No. 44.[5] Moreover, the California Supreme Court has held that, under the right to privacy established by the California Constitution, an individual with ''nonpublished/unlisted'' service has a reasonable expectation of privacy in his or her unlisted information.[6]

Thus, unlike the cases on which the General Counsel relies,[7] at the time the complaining customer filed her complaint, GTE had a preexisting obligation to keep her name, address, and telephone number confidential. Her filing of the complaint did not alter the confidential character of this information.[8]

Additionally, contrary to the General Counsel, although GTE relies in part on a state statute or rule in asserting its confidentiality claim and that statute or rule would be preempted under *Garmon* to the extent that it concerns conduct that is arguably protected by Section 7 or prohibited by Section 8 of the Act, GTE's claim of confidentiality is not thereby negated. The essential facts are that GTE, in granting the complaining customer an unpublished listing, had in effect promised to keep her listing information confidential; the complaining customer, having requested and paid for an unpublished listing, had a reasonable expectation that GTE would treat her listing information as confidential. That GTE, in promising to keep the complaining customer's listing information confidential, was complying with state law is not necessary to GTE's confidentiality claim. It is the transaction between GTE

[3] *San Diego Building Trades Council v. Garmon*, 359 U.S. 234 (1959).

[4] *Detroit Edison Co. v. NLRB*, 440 U.S. 301, 314 (1979).

[5] See fn. 2, above.

[6] *People v. Chapman*, 36 Cal.3d 98, 679 P.2d 62, 201 Cal.Rptr. 628 (1984).

[7] *Resorts International Hotel*, 307 NLRB 1437 (1992); *Fairmont Hotel*, 304 NLRB 746 (1991).

[8] On this basis, as well as the accommodation agreed to by the Respondent and the statutory and privacy claims asserted, Chairman Gould finds that his Opinion and Award in *Safeway Stores, Inc.*, 64 Lab. Arb. 563, 564 (1974) (grievant who is a supermarket checker has the right to confront her accusers who alleged that she was ''rude'') is distinguishable.

and the complaining customer, as well as the personal nature of the information at issue, that establishes the confidential character of her listing information. Although information need not be designated as confidential by statute or rule in order for the Board to recognize it as such,[9] the fact that the information at issue here has been deemed confidential by state law and that state law may, under certain circumstances, be preempted does not mean that the information is not of a confidential character. Indeed, it would be incongruous if the designation of certain information as confidential by state law led the Board to disregard its confidential character in the name of preemption.[10]

Although we find that the information that the Union requested is relevant and that GTE has shown a confidentiality interest in that information, we need not, in this case, attempt to weigh the Union's need for the requested information against the confidentiality interests shown by GTE. As the Board, in *Pennsylvania Power*, supra, has stated:

> [A] party refusing to supply information on confidentiality grounds has a duty to seek an accommodation. Thus, when a union is entitled to information concerning which an employer can legitimately claim a partial confidentiality interest, the employer must bargain toward an accommodation between the union's information needs and the employer's justified interests.[11]

GTE has done precisely what *Pennsylvania Power* requires. GTE proposed, the parties bargained over, and the Union ultimately accepted an accommodation between the Union's information interests and GTE's confidentiality interests that succeeded in furthering both parties' interests.[12] Thus, on October 9, 1995, after obtaining the complaining customer's cooperation and consent, GTE Representative Zapeda telephoned the complaining customer and, once she was on the line, turned the telephone over to union representative Mendoza and left the room. This allowed Mendoza to have a private conversation with the complaining customer, which lasted about 20 minutes.

This arrangement permitted GTE to realize its objective of maintaining the confidentiality of the complaining customer's name, address, and telephone number, while enabling the Union to achieve its objective of interviewing the complaining customer. Although the Union never received the information it had directly requested—the complaining customer's name, address, and telephone number—the Union presumably had sought those as a means to contact the complaining customer and interview her about her conversation with the information operator that had prompted her to lodge a complaint with GTE. Indeed, had GTE provided the Union the complaining customer's name, address, and telephone number and the Union had contacted her directly, there is no assurance that she would have agreed to be interviewed about this incident. Thus, by agreeing to GTE's proposed accommodation, the Union achieved more than it might have if GTE had granted the Union's information request. Moreover, following Mendoza's telephone conversation with the complaining customer, the Union made no request to speak to her again, nor is there any contention that Mendoza's telephone conversation with her was inadequate. Accordingly, as we find that GTE proposed, the parties bargained over, and the Union ultimately accepted an accommodation that permitted GTE to keep the requested information confidential and allowed the Union to fulfill its representational duty of interviewing the individual whose complaint had led to an employee discharge, we conclude that GTE's refusal to provide the Union with the complaining customer's name, address, and telephone number did not violate Section 8(a)(5) and (1) of the Act.

The General Counsel contends that GTE's general position that it will not provide the Union with listing information of customers with ''non-published/unlisted'' numbers violates Section 8(a)(5) and (1). The parties stipulated that, beginning about September 24, 1994, and continuing to date, GTE has refused and continues to refuse to provide, during the processing of grievances, the names, addresses, and home telephone numbers of any complaining customers with ''non-published/unlisted'' numbers who have not given their consent to release that information. We decline to find GTE's stated position in itself violates the Act.

After finding that a union's need for relevant information must be balanced against any legitimate and substantial confidentiality interests established by the employer, the Board in *Pennsylvania Power* stated: ''The appropriate accommodation necessarily depends on the particular circumstances of each case.''[13] The

[9] See *Detroit Edison*, above (recognizing confidentiality of psychological test scores).

[10] The preemption doctrine would, however, come into play if we were to find that the Union's need for the requested information outweighed GTE's confidentiality interest in the information. State law provisions requiring GTE not to disclose the information would not, in that instance, bar us from ordering GTE to provide the information to the Union or bar GTE from complying with such an order. See, e.g., *E. R. Carpenter Co.*, 284 NLRB 273 fn. 1 (1987).

Member Higgins does not pass on the issue of whether a state law protecting the privacy of the state's citizenry would necessarily be preempted and invalid under the NLRA. Although *a party's* interest may be outweighed by a union's interest, this does not necessarily mean that *the state's* public interest is outweighed and nullified. Since the Union's interest here does not outweigh GTE's interest, Member Higgins finds it unnecessary to pass on this issue.

[11] 301 NLRB at 1105–1106 (fn. omitted).

[12] No party contends that the passage of approximately 5 months from the Union's initial information request to GTE's tendering its accommodation proposal violated the Act.

[13] 301 NLRB at 1105.

General Counsel does not contend, and the facts do not establish, that GTE has denied any union requests for the name, address, or telephone number of any customer with a ''non-published/unlisted'' number other than the customer whose complaint led to Hokanson's discharge. Consequently, absent any specific denial of an information request relating to a customer with a ''non-published/unlisted'' number, we do not find GTE's position in the abstract regarding any such information requests to violate the Act. Accordingly, we shall dismiss the complaint.

ORDER

The complaint is dismissed.

MEMBER FOX, concurring.

Although I agree with my colleagues' dismissal of the complaint, I do not rely on their rationale that the Respondent had a ''preexisting'' confidentiality obligation that supported the Respondent's refusal to furnish otherwise relevant information to the Union.

On September 17, 1994, one of the Respondent's customers dialed ''4–1–1'' to obtain a telephone number. After speaking to telephone information assistance operator Charles Hokanson, the customer lodged a complaint with the Respondent regarding Hokanson's allegedly inappropriate behavior during the call. Although not entirely clear in the record, it is evident that the complaining customer must have revealed to the Respondent her name and either her telephone number or address, and perhaps all of this information, in order to lodge the complaint against Hokanson and to have the complaint processed. As a result of the customer's complaint, the Respondent terminated Hokanson. Thereafter, the Union sought from the Respondent the name, address, and home telephone number of the complaining customer, which the Respondent declined to furnish.

In finding that the Respondent possessed a preexisting obligation of confidentiality toward the complaining customer that is supportive of its failure to furnish the requested information, my colleagues rely on the Respondent's tariff rule (Tariff Rule 44) filed with the California Public Utilities Commission that prohibits the release of ''non-published/unlisted'' telephone numbers. My colleagues reason that because the complaining customer's account was for nonpublished/unlisted telephone service, the Respondent could invoke a confidentiality interest flowing from Tariff Rule 44 when it declined the Union's information request. I disagree.

In my view, the Tariff Rule 44 confidentiality interest has no application to the facts of this case. Here, the Union sought information that the complaining customer turned over to the Respondent in connection with the complaint against employee Hokanson. The confidential, unlisted, and unpublished nature of the complaining customer's service account, however, had nothing at all to do with the circumstances surrounding that complaint. The customer made a ''4–1–1'' call and then revealed her identity to the Respondent as part of the complaint. The Union sought information that was part of *that* transaction, and did not seek information that called for a search of the customer's confidential service account records. In my view, in these circumstances, it is inappropriate to permit the Respondent to use Tariff Rule 44 as a shield to refuse to release relevant information to the Union while, at the same time, using the same information as a sword against employee Hokanson during the grievance process.

Accordingly, in dismissing the complaint I rely only on the accommodation reached by the parties that permitted the Union to interview the complaining customer and to fulfill its representational functions in this fashion. *Pennsylvania Power & Light Co.*, 301 NLRB 1104 (1991).[1]

[1] The complaint is limited to the Respondent's refusal to furnish information pertaining to the termination of employee Hokanson and does not allege that the Respondent's general policy concerning the release of nonpublished/unlisted information violates the Act in any respect. Accordingly, I do not join that part of the decision pertaining to the Respondent's so-called general ''position in the abstract'' that may apply regarding the release of allegedly confidential information in other circumstances.